

SEVERAL SUITS DECIDED BY THE SUPREME COURT

Among Which is That of the State against Former Sheriff Flanigan.

CHARLESTON, Jan. 29.—Among the decisions handed down by the supreme court of appeals this week was one by Judge Miller reversing the workman's compensation commission in the Gooding case from Preston county in which compensation was denied, dependants of a miner killed in the Maryland workings of a shaft mine having its entrance and tipple in West Virginia. The supreme court holds that compensation should be allowed, as the mine is a West Virginia operation, even though its entrance extend under the border line of the two states and coal is being mined from rooms located in the adjoining state.

Another important decision was that in the case of the state against John M. Flanigan, former sheriff of Harrison county, which sustains the lower court which decided in favor of Flanigan in a suit by the state to recover commissions allowed by county court.

The following are the syllabi of the cases:

Gooding vs. Ott, state compensation commissioner; order reversed and remanded; Miller Judge.

Where a coal company of this state, with principal offices and tipple and main entrance and the principal part of its mine located in this state, has qualified under the provisions of the workmen's compensation act of this state, as amended by the acts of the legislature of 1913 by paying the premiums of liability and by giving notice to miners employed in its mine, etc., as required by said act, the widow of a miner residing in this state and so employed therein, unless employed wholly without the state, and whose injuries resulting in his death were sustained in the course of and resulting from his employment, while temporarily at work in that part of the mine located in an adjoining state, is entitled to participate in the workmen's compensation fund created by said act, notwithstanding the language of section twenty-five thereof, authorizing disbursements of such fund to employees who "shall have received injuries in this state."

The relation of employer and employee, under said act, being voluntary and not compulsory, is contractual, the statute becoming an integral part of the contract, and limiting the rights and liabilities of employer and employee, binding upon the parties and enforceable in other jurisdictions unless opposed to the public policy thereof, and as all other foreign contracts are enforceable therein.

Channell Brothers vs. West Virginia Pulp and Paper Company, Randolph county; reversed; remanded; new trial awarded; Poffenbarger, Judge.

Authority vested in an agent to accomplish stated results, for and on behalf of his principal, includes by implication power to do whatever is reasonably necessary to the effectuation thereof, in the usual and customary way.

Authority in an agent to conduct

a business of which the making of working contracts is an incident, has implied power to make an original promise to a stranger to pay for supplies furnished by him to contractors for the work, as a means of enabling them to perform their contracts.

Whether the oral promise to pay one person for merchandise delivered to another, is original or collateral, depends upon the intention of the parties, to be ascertained from their situation and conduct, the words of the promise and all the circumstances attending the transaction.

Instructions given on the trial of such an issue, requiring the jury to make their finding depend upon certain inconclusive facts constituting only a part of what transpired between the parties, are erroneous and prejudicial.

A party desiring to avail himself of admissions found in depositions taken by the opposite party, should not be required to read such depositions in their entirety, but only so much thereof, in addition to the admissions, as pertains to, and qualifies or explains them.

Hardman vs. Brown et al, Randolph county; judgment affirmed; Miller, Judge.

The declaration alleges fee simple title in plaintiff. Besides the deeds granting to plaintiff and those under whom defendants claim title, plaintiff introduced in evidence a decree against his co-tenants adjudicating his right and title to the land, pronouncing before defendants acquired their deed, and also the deed of the special commissioner appointed to convey to him the interests so decreed him, made pursuant to such decree, and before suit. There was no variance between allegata and probata.

When the deed of a special commissioner, made pursuant to a decree confirming a sale of investing right and title in the grantee, is executed and delivered to the grantee the deed relates back to the date of the sale or decree so adjudicating or investing title, and entitles the grantee to everything he would have been entitled to if the sale or decree and deed had been made contemporaneously.

An action on the case may be maintained by the grantee in such deed for waste committed by a co-tenant on such land between the date of such decree and the date of the deed conveying the land to him.

While the deed of a co-tenant to a stranger, purporting to convey the whole estate, and possession taken by the grantee thereunder, will for some purposes work an ouster of the other co-tenant, such deed will not within the period of the statute of limitations destroy the relationship of co-tenancy, nor within that time affect the remedies of the ousted co-tenant, to recover possession of the land, or damages for waste committed thereon.

A deed in due form for standing timber and containing words of grant and conveyance, with covenants of general warranty, does not constitute the grantee a mere licensee of the grantor, but invests in him legal title with right irrevocable to

take the timber, unless otherwise limited by express provisions of the deed.

When a co-tenant has wantonly committed waste on land, by cutting and removing the standing timber thereon, and the jury so finds, he is liable to his co-tenant by virtue of section four, chapter ninety-two of the Code in triple damages therefor.

A co-tenant is guilty of committing waste wantonly when with knowledge of his co-tenant's rights, and in total disregard thereof, and with the design and purpose of ignoring those rights, he purposely and with intent to appropriate the same to his own use, cuts and removes from the land the standing timber thereon.

Koontz, Phillips and Stamm vs. Mylius et al, Randolph county; affirmed; Williams, president.

Where the issues involved in an action have been previously decided by a court of competent jurisdiction, in another suit between the same parties, such issues are res judicata, and the parties are thereby estopped from controverting them.

When there is a conflict in the boundary lines of co-terminous land owners, and one of them seeks, by bill in equity, to enjoin the other from cutting and removing the timber from the disputed area, and on full hearing the preliminary injunction previously awarded is dissolved and plaintiff's bill dismissed, and he thereafter sells the timber on the disputed land and his vendee severs and removes it, he is estopped, in an action of trespass against him by the defendant in the injunction suit, to deny the title of the latter, unless by his subsequent acts or declarations respecting the matters in issue such defendant has caused him to be misled to his injury; or, in other words, unless his subsequent actions or statements amount to an estoppel upon him.

Incorrect information, innocently given, and without any purpose to deceive, by one of such parties to the other or to his agent, respecting the description of his boundary line, although believed as true and acted on by such other, does not amount to an estoppel, unless the party relying thereon is misled thereby to his injury.

If the attorney for the defendant does not announce his purpose to submit the case to the jury without argument, until after the attorney for plaintiff has concluded his opening argument, and he then declares such purpose, it is no abuse of discretion for the trial judge to permit plaintiff's attorney to make a second argument to the jury.

The court may permit the jury to take to their room when they retire to consider of their verdict, any paper read in evidence before them; and, at the request of the jury or any one of them, it may allow a paper to be read a second time, and any juror has the right to make notes therefrom when it is so read.

State for use, etc., vs. Flanigan et al, Harrison county; affirmed; Williams, president.

The signing of a bill by the prosecuting attorney of a county on behalf of the county court thereof, none of the allegations contained therein purporting to be made by the county court, is not sufficient to make it the plaintiff to such bill.

A party having no interest can not maintain a suit in equity on behalf of a party having the only substantial interest.

Section two, chapter ten, code 1913, does not authorize a suit in equity to be brought in the name of the state, on a sheriff's official bond, for the benefit of the county court. Such suit must be brought by and in the name of the county court.

Town of Gassaway vs. Klein et al, Braxton county; affirmed; Mason, Judge.

The council of any town subject to the provisions of chapter forty-seven of the code, has authority under section twenty-eight of that chapter "to order the sidewalks, footways, crosswalks, drains and gutters to be curbed and paved and kept in good order, free and clean by the owners or occupants thereof, or of the real property next adjacent thereto."

By section thirty-four of chapter forty-seven, it is provided that, "If the owner of occupant of any sidewalk, footway or gutter, in said city, town or village, or of the real property next adjacent thereto, shall fail or refuse to curb, pave or keep the same clean, in the manner or within the time required by the council, it shall be the duty of the council to cause the same to be done at the expense of the city, town or village, and to assess the amount of such expense upon such owner or occupant, and the same may be collected by sergeant in the manner herein provided for the collection of the city, town or village taxes."

Acting on the authority conferred upon it by sections twenty-eight and thirty-four of chapter forty-seven of the code, the common council adopted an ordinance requiring the owners and occupants of real estate on the west side of Elk street, between Third and Seventh streets, to make brick or cement pavements on the sidewalks next adjacent to their property, according to the provisions of the ordinance and within fifteen days after notice of the ordinance shall have been served; and providing further that, "If any owner or occupier of the real estate hereinbefore mentioned shall refuse or fail to make the said pavement as herein required, the superintendent of roads, streets and alleys shall cause the same to be done, and report the itemized cost of the same to the council, which cost shall be charged to the said owners or occupier, and payment thereof enforced as town taxes are enforced." Held: That the town could not under this ordinance, not under the statutes authorizing the ordinance, charge the owner of the real estate with expenses for grading, excavating, or stonework done in preparing the sidewalk for the pavement or curb.

An assessment made by a town council against a lot owner, charging him with the expenses for excavating, curbing, paving and stonework, as one entire account, done by the town under sections twenty-eight and thirty-four of chapter forty-seven of the code, is void, although a part of the account would be a valid demand if the owner of the lot had been given the opportunity to do the work and had refused or failed to do so. Before such an assessment can be binding on the lot owners or become a lien on his property, he must have had an opportunity to do the work which he could be required to do, and have refused or failed to do.

Doane vs. Parsons Puly and Lumber Company, Randolph county; reversed; new trial; Mason, Judge.

A motion for continuance is generally addressed to the sound discretion of the court under all the circumstances of the cases, and although the appellate court will review the action of the inferior court on such matters, it will not reverse a judgment on that ground unless such action was plainly erroneous.

If a party be ruled into a trial, after having made a motion for a continuance, and it appears that he was entitled to a continuance, a judgment against him upon such trial will be reversed by the appellate court, but the appellate court will not reverse the judgment of the inferior court for such reason unless its action was plainly erroneous.

FAIRMONT'S NEW STREET LIGHTS TRIED OUT

Three Hundred Luminous Arc Lamps Now Being Installed in That City.

FAIRMONT, Jan. 29.—Seventy-one of the 300 luminous arc lamps being installed in the streets of Fairmont were lighted last evening for the first time. It will require a month or six weeks to complete the installation of the remaining lamps provided for in the contract between the city board of affairs and the Monongahela Valley Traction Company. Fifteen of the lamps lit last evening are in central Fairmont and fifty-six are distributed throughout the East Side streets. The city will pay the traction company prices ranging from \$52.25 to \$55 per year for the maintenance of each light.

Antonio Falcone, alias Tony Falcone, was arrested in Uniontown yesterday through the efforts of Sheriff C. D. Conway on a charge of attempting to kill Nicholas Chinella at Monongah by driving the steel point of a coal miner's pick into the base of the victim's brain. The pick recovered by the officers is covered with blood for two and one-half inches from the point. The assault occurred Wednesday evening in a boarding house at Monongah. Chinella was struck while he was stooping over a wash basin sitting on a bench, washing for supper. Chinella was taken to Miner's hospital here where an operation was performed. Physicians say he has a fighting chance for recovery.

Nearly \$1,500 has been contributed by business men and others in Fairmont during the last week to the fund being raised throughout the United States for the relief of Hebrews rendered destitute as a result of the European war. Simon D. Goodman, treasurer of the fund in Fairmont, sent a check for \$1,000 Friday to Harvey Fischer, of New York, treasurer of the central committee. The remainder of the local contributions will be sent in a few days.

Voters of the Paw Paw district at a mass meeting in Fairview last Thursday evening decided that a bond issue of \$350,000 for the building of permanent roads in the district should be voted on by the people. A petition asking the county court to authorize an election to vote on the bond issue is being prepared.

The Northwestern convocation of the diocese of West Virginia of the Protestant Episcopal church closed a busy two-day session in Fairmont Thursday evening. Bishop Gravatt, of Charles Town, presided at the sessions which were held in Christ church. It was decided to hold a special meeting of the convocation in Wheeling, February 23 for the purpose of increasing the endowment from \$40,000 to \$100,000. The next regular meeting will be held in Buckhannon in September.

The Monongahela Valley Traction Company yesterday started a preliminary survey on the East Side with the purpose in view of constructing a loop to afford trolley service to parts of that section of the city, at present without such service. The erection of a splendid new freight station is also being discussed by the traction company. A suitable site for such a building is being sought in the business section of the city.

The Marion County Teachers Association held a well attended meeting Friday in the Normal school building.

Practical agriculture will be taught the pupils of the Fairmont high school this spring. A large lot near the high school building will be used for demonstration work, each pupil being assigned a plot upon which to raise flowers and vegetables.

A "hangin'" market house to be constructed in connection with the proposed concrete bridge across Coal run ravine was proposed by A. Howard Fleming and explained in detail at a special meeting of the city board of affairs last Wednesday. The market house, according to Mr. Fleming's suggestions, would be constructed beneath the driveway of the proposed bridge, causing the bridge to have two decks. The proposed market house would be seventy feet wide and 400 feet long, affording 28,000 feet of floor

space for stalls to be rented to farmers, hucksters and others with food-stuffs for sale. Such a market house, it is believed, would greatly reduce the cost of living in Fairmont.

An apple orchard of 200 trees will be planted on the Marion county poor farm this spring, the trees having been ordered by the county court this week. The 200 trees include a large number of varieties, the orchard being designed to provide apples for use on the farm when the present old orchard is gone. Twelve cherry trees were also ordered.

That the women of West Virginia, if given the ballot, will aid in keeping the state "dry" was the declaration of Miss Lavinia Engle, field secretary for the National Suffrage Association, who has spent two weeks in Marion county effecting a ward and district organization for the purpose of fighting in behalf of the suffrage amendment to the constitution to be voted on at the next general election.

The jury disagreed and was discharged in the case of J. H. Knicely, tried in intermediate court under the Yost law. Prosecuting Attorney Hagerty says the case will be tried again at the next term of court.

H. B. Wilson, aged 47, died last Monday at the home of his brother, Newton Wilson, on Toothman's run.

The Fairmont Choral Society, an organization of local musicians, was formed Monday evening at a well attended meeting in the chamber of commerce hall. The officers are Lamar C. Satterfield president, Miss Edna Jacobs secretary, and Luther Randall treasurer.

The election of officers for the new Fairmont Hotel Corporation will take place Monday, February 7. In the meantime the committee on building specifications has been busy looking over plans submitted by a score or more of architects. Nothing distinctly original in hotel construction has as yet been suggested.

The "first robin of the season" has been seen sitting about in widely separated parts of Marion county by a number of persons during the last week, it is said.

A farmers' club with eighty-five members was organized last Wednesday evening at Wyatt, the members including residents of both Marion and Harrison counties.

Gary McCormick, aged 24, of Grant Town, lost his right foot in a coal mine accident last Monday.

Seventeen new boards were placed in the floor of the South Side bridge this week by city workmen.

J. B. Marr, an undertaker, died at his home in Mannington Wednesday evening.

Louis Kneisel, aged 43 years, a barber of Main street, died Friday.

GIRL LEAVES BED IN SLEEP, DIES IN COLD

Frozen Body of Young Woman Found beneath Tree on a Farm.

GREENWICH, Conn., Jan. 29.—Beautiful 19-year-old Miss Margaret Curtiss, daughter of Mr. and Mrs. Julian W. Curtiss of this place, got up out of bed in the middle of the night, and wandering out into the yard in the height of the storm, suffered exposure that probably caused her death.

Miss Curtiss retired, apparently in her usual good spirits, about half past eleven o'clock at night, and when relatives went to her room to call her in the morning she was missing. A search followed and her body was found dead about three hundred feet from her home. She was fully dressed and indications were that she had been wandering about the premises some time before being overcome by the cold and freezing to death.

Efforts were made to keep the news of her death from the public, and reports were circulated to the effect that she was still missing from home, it being at first thought that she had gone to the home of a friend.

Julian W. Curtiss, who is vice-president of the A. G. Spaulding Sporting Goods Company of New York, told reporters that his daughter had a habit of walking in her sleep, and that he was of the opinion that she wandered from the house fully dressed.

Dr. John A. Clark, city physician of Greenwich, was notified of the death. He would not give out a statement other than to say that Miss Curtiss probably was insane.

Miss Curtiss returned to her home here for a visit with her parents. She was a student in the Cook boarding school, Westbrook, Mass., and was popular in the younger social set of Greenwich. Constable George T. Jones said that upon her return she was the recipient of invitations to several functions, and her mother forbade her attending them, owing to the condition of her health. This, he said, preyed upon her mind.

DISEASES SPREAD

One small germ in the home, the chicken house, stable, or the out-houses cause the spread of disease and much sickness. The good house-keeper says, that Formo-Sol is the most satisfactory disinfectant used for the prevention and destruction of disease germs. Price 25c. Full directions on bottle. Not sold in drug stores. Essential Chemical Company, P. O. Box 172, Clarksburg, W. Va.—Advertisement.

GARY SCHOOL LIKE ONE LARGE FAMILY

Teacher More Like Mother of the Flock Than Typical "Schoolmarm."

GARY, Ind., Jan. 29.—A day in the Gary school and half an hour with William A. Wirt, unfolds wonders. It explains why Wirt was urged for superintendent of Chicago schools and why New York begged his advice.

What is it about this place that fits one like a rocking chair made to order?

The answer is "It's the family spirit."

The Gary school day is from eight until five o'clock. But let nobody imagine there are overworked children in the Gary schools. Primarily the extra two hours from three to five are meant to keep the boy and girl out of the street. It is a crime, according to Mr. Wirt, to let those two hours be wasted when they can be put in with interesting play in the school.

No Work; All Play.

For there is no work in the Gary schools. It is all play—meant to be so. And by the appearance of the children you know this to be so. The Emerson, like the bigger Froebel school, accommodates the high school pupils, the grade children and the kindergartens all at the same time. Again it is the family idea. The younger ones have constantly before them the example of the older children.

For instance, a kindergarten room may be placed next to the botany room or the physics laboratory. How the big eyes stare into those more dignified quarters, how the little imaginations plan to reach there some day.

As to changing, there is no set order, no rule, no stiff lining up in class and out, pupils are not subjected to the constant "H!" admonishment. The teacher is more like the mother of the flock or the big sister, and down in the shops the boys appear to be working with father. It is just because there are no set, prison-like rules, that there is no noise and no disorder.

Playground a Feature.

And some group is playing all of the time. There are about five acres of playground about the school and a wading pool and garden for the spring and summer. And the auditorium, gymnasiums and swimming pool are seldom empty.

Some group is always playing. When one or three groups return for arithmetic or drawing, another group goes out to romp to music in the auditorium, or down to the city market.

And things are so arranged that if the parents of a child so desire, a play hour may be put in at the family church for religious instruction. The churches have co-operated with Mr. Wirt in this.

At the Froebel school all the tables, chairs, cupboards and cases were made by the boys. A boy working in the shop gets his time card and is paid sixty cents an hour. At the end of the week he is given a check which he deposits in the school bank and when he has saved \$80 he has made a credit toward graduation.

Every teacher in the Gary schools

is a specialist. Classes visit her room for what she can particularly give them. Thus their interest is stimulated by the expression of a mind skilled in one special subject.

It is estimated some 10,000 persons are instructed daily in Gary. The schools are open to men and women until nine at night to kind of work they choose to follow.

This interest of the parents is one of the particularly wise points in the very wise administration of Mr. Wirt. In a mill city such as Gary the children frequently are taken out of school at fourteen and put to work.

For the Parents, Too.

Getting the parents to come to school is stimulating their interest in keeping the children there. And as far as the children's volition is concerned, they are not dashing for the school exit, by any means.

The Emerson school has about 800 pupils. With its careful scattering of class work and play time, it could accommodate many more. The Froebel has 1,900 day pupils and more than that at night.

The Jefferson school, the first put up by the steel mills people, is still in use. Mr. Wirt made an attic into a gymnasium, put in special teachers and equipped a playground. Barring the elderly aspect of the place, it is as model as any.

ROOSEVELT IDEA

Of Large Families is Certainly Exemplified in Philippines to His Satisfaction.

(BY ASSOCIATED PRESS)

MANILA, P. I., Jan. 29.—The bureau of health gives notice of the death of five centenarians, three of whom were women, in one week in Manila. It points with equal prominence to the record of Don Isabela de los Reyes, member of the municipal board of this city, whose family now numbers twenty-one children, the latest addition being a boy and girl, twins. Sr. Reyes is 61 years of age.

The next record among leading Filipinos is held by Don Gregorio Aranaeta, who is the father of fourteen children; but he has not yet passed his fortieth year. Sr. Aranaeta was secretary of finance and justice under the Taft administration.

(Political Advertisement.)

ANNOUNCEMENT

To the voters of Harrison county:

I hereby announce my candidacy for the Republican nomination for Sheriff of Harrison county, subject to the decision of the primary election to be held Tuesday, June 6, 1916.

I most earnestly ask your support and influence, and if nominated and elected, I not only promise to discharge faithfully and fearlessly the duties of the office, but will give my very best service to ALL the people.

L. WAYMAN OGDEN,

Clarksburg, W. Va.

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H. C. Alexander Brokerage Company Room 427 Fourth Floor.	Marietta Torpedo Co., Room 630 Sixth Floor.
D. D. Britt Room 323 Civil Engineer Third Floor.	Neff & Lohm Room 207 Attorneys-at-Law Second Floor.
C. A. Butcher Room 430 Lumber Third Floor.	S. Newman Rooms 541-542 Ladies' Tailor Fifth Floor.
Board of Education Clarksburg Independent School District Fourth Floor.	Frederick Ott Rooms 529 General Contractor Third Floor.
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Consolidation Coal Co. Rooms 333-340 Fifth Floor.	Public Stenographer Room 211 1-2 Second Floor.
Citizen's Loan Co. Room 423 Fourth Floor.	Prudential Life Insurance Company Room 430 Fourth Floor.
R. G. Dunn & Co. Room 429 Fourth Floor.	Dr. R. D. Rumbaugh Rooms 312-313 Dentist Third Floor.
Fairmont Coal Co. Room 635 Fifth Floor.	Richards Construction Co. Rooms 610-615-616-617 Contractors Sixth Floor.
G. W. Gall, Jr. Room 429 Fourth Floor.	Lewis M. Sutton Special Agent Mutual Life Ins. Co. Mezzanine Floor.
Home Loan Co. Room 643 Sixth Floor.	Sperry & Sperry Rooms 203-4 Attorneys-at-Law Second Floor.
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Holmboe & Lafferty Rooms 651-3 1-2 Sixth Floor.	A. K. Thorn & Co. Room 438 Fire and Life Insurance Fourth Floor.
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C. P. Keely & Co. Room 648 Sixth Floor.	Dr. J. E. Wilson Room 211 1/2 Physician Second Floor.
Dr. F. S. Linger Rooms 312-313 Dentist Third Floor.	R. R. Whison Room 288 Attorneys-at-Law Second Floor.

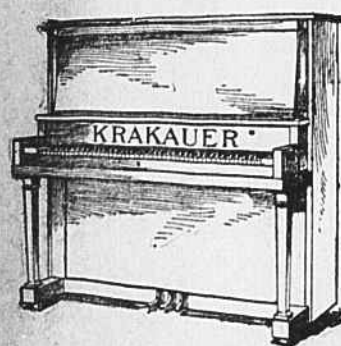
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but can be had at any Drug Store or Country Store where medicines are sold for only 25c a bottle.

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A visit to our Player Roll department implies no obligation. Come in and hear your favorite selection on the Player.

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